IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Dated: 25/06/2004

C o r a m

The Hon'ble Mr.Justice. N.V.BALASUBRAMANIAN
and
The Hon'ble Mr.Justice S.K.KRISHNAN

Appeal Suit No.954 of 1988
and
Appeal Suit No.1118 of 2001
and
C.M.P.No.13244 of 1988

1.Glori Ammal
2.Julia Chandravathi
3.Prabavathy Rebakkal. ..Appellants in A.S.No.954 of 1988

-Vs-

1.Sukanthi
2.Hena
3.St. Thomas Boys' Home Meignanapuram
thro' its President Kanakaranjitham
Thomas.
4.Johnson Appadurai
5.Ponraj
6.Yovan Nadar (died)
7.Mrs. Sarojini
8.Ms.Densy
9.Mrs. Jancy
10.Mel Chizedece
11.Mrs. Ponrani
12.Mrs. Jebarani
13.Mr. Ezra Rajamani
14.Mr. Vijay. ..Respondents in A.S.No.954 of 1988

(R7 to R14 are brought on record
as legal representatives of the
deceased, sixth respondent as per
order of the Court dated 17.4.2003
made in C.M.P.Nos.5490 of 2003
to 5492 of 2003 by NVBJ & TVMJ).

1.Yovan Nadar (died)
2.Mrs. Sarojini
3.Ms.Densy

4.Mrs. Jancy
5.Mel Chizedece
6.Mrs. Ponrani
7.Mrs. Jebarani
8.Mr. Ezra Rajamani
9.Mr. Vijay. .... Appellants in A.S.No.1118 of 2001

(Appellants 2 to 9 were brought
on record as the legal heirs of the
deceased as per the Order dated
18.12.2003 of the Court in
C.M.P.No.5152 to 5154 of 2003
by NVBJ and SKKJ)
Vs.

Johnson Appadurai ..Respondent in A.S.No.1118 of 2001

Appeal filed under Section 96 C.P.C. against the Judgment dated 30.6 .1987 passed by the Principal Subordinate Judge, Tuticorin in O.S. No.50 of 1982 and in O.S.No.93 of 1984 as prayed for therein.

!For Appellants : Mr.Pushpa Sathyanarayanan
for Mr. T.R. Rajagopalan.

^For Respondent No.3 : Mrs.Thenkodi Nelson
for Mr. P.Duraisamy

For Respondent No.4 : Mr.D. Govinda Reddy
for Mr. C.S. Kannan

For Respondents No.7 to 14 : Mr. T.K. Premkumar
for Mr.N.Krishnaveni.

:J U D G M E N T

(S.K.KRISHNAN. J)
Aggrieved by the judgment and decree passed by the Subordinate Judge, Tuticorin in O.S.No.50 of 1982, dated 30.7.1987, the plaintiffs/appellants, have come forward with the appeal, bearing No.954 of 199 8.
2. The defendant in O.S.No.93 of 1984, aggrieved by the order of the learned Subordinate Judge, Tuticorin, had filed an appeal, bearing A.S.No.130 of 1987, against the plaintiff before the District Judge, Tirunelveli, which was transferred to try along with the above said appeal in A.S.No.954 of 1988. Since both the appeals arose out of a common judgment, both the appeals are heard together and disposed of by a common judgment.
3. The facts, in brief, are as follows:
The suit properties originally belonged to one Andrews, who died as a Christian leaving behind his wife, Aniranjitham, his daughter/ first defendant, Suganthi, and his son, George, and thereby they are having a share of 1/3 in the suit properties which were enjoyed by them jointly. The said

George, died as a Christian leaving behind the plaintiffs in O.S.No.50 of 1982. Thereafter, the said Aniranjitham, the first defendant and the plaintiffs enjoyed the properties jointly. Prior to one month to the filing of the suit, the said Aniranjitham also died and her share in the properties were divided equally between the plaintiffs and the first defendant. The plaintiffs and the first defendant enjoyed the properties jointly. It is alleged that from the deceased Aniranjitham, the second defendant got a deed in a clandestine manner by forging the signature of the deceased Aniranjitham. On the basis of the said deed, on 24.11.1980, the second defendant sold the first item of the schedule mentioned properties for Rs.16000/- to the third defendant and executed a deed in favour of the third defendant and likewise, second, third and fourth items of the schedule mentioned properties were sold for Rs.6500/- to the fourth defendant and executed a deed in favour of him, and sold the fifth item of the schedule mentioned properties to the fifth defendant for Rs.620/- and executed a deed in favour of the fifth defendant. But the said properties were not in the possession of the above said defendants. The house, item 4 of the schedule mentioned properties, was leased out to the sixth defendant, who has been residing in that house as a lessee under the plaintiffs. It is stated that the above deeds are invalid and do not bind the plaintiffs and they have not given any right to the parties concerned. In view of the conduct of the second defendant, the plaintiffs claimed for partition, but the first defendant did not accept to their claim and therefore, on 23.1.1981 , the first plaintiff gave notices objecting to the deeds executed by the second defendant, for which, the fourth defendant gave reply on 7.2.1981 with false details. As alleged in the reply no partition was made as per family arrangement and the defendants cannot also claim adverse possession. After the notice of the first plaintiff, the said Aniranjitham died. Since the defendants denied the request of the plaintiffs for partition of the properties, the plaintiffs filed the suit before the Subordinate Judge, Tuticorin, who dismissed the same. Aggrieved by the judgment and decree of the Subordinate Judge, Tuticorin, the plaintiffs have come forward with this appeal.

4. The learned counsel for the appellants would contend that no family arrangement was effected between the family members of Dr. Andrews after his death and that the so-called sale of the properties by the second defendant cannot be accepted and as such the sale was invalid and therefore, the respective share of the plaintiffs in the suit properties may be allotted for their possession and enjoyment.

5. In contra, the learned counsel appearing for the defendants would contend that after the death of Dr.Andrews there was a family arrangement, in which some properties were allotted to Aniranjitham, wife of Dr. Andrews and on the basis of Power of Attorney executed by Aniranjitham, the second defendant sold the properties to the defendants 3 to 5 and therefore, such sale cannot be questioned by the plaintiffs as the same was a valid one.

6. In the above circumstances, the points that arise for consideration in A.S.No.954 of 1988 are :

a. Whether any family arrangement has been effected between Aniranjitham and her son and daughter during 1954 immediately after the death of Dr.Andrews.

b. Whether in such family arrangement any shares were

allotted to each legal heirs as claimed by the defendants.
7. It is an admitted fact that Dr.Andrews, who was the head of the family was passed away during 1954 leaving some immovable properties. It is the case of the appellants/plaintiffs that after the demise of Dr.Andrews, no partition was effected between the parties/legal heirs of Dr. Andrews and no properties were given to his legal heirs for their exclusive possession and enjoyment.
8. According to the plaintiffs, after the death of Dr.Andrews the properties left by him were in joint possession and enjoyment of the family members, i.e., wife, son and daughter of Andrews. Further, the case of the plaintiffs is that after the death of the wife of Dr.Andrews, namely, Aniranjitham, in the year 1982, the only legal heirs of Dr. Andrews are his son and daughter. It is seen that the son of Dr. Andrews, namely, George died in the year 1978 prior to the death of his mother. Therefore, the entire properties left by the Andrews devolves on the plaintiffs as well as the first defendant.
9. Since there was no partition effected between the plaintiffs and the first defendant, the plaintiffs have filed a suit for partition claiming their respective half share and the remaining share has to be allotted to the first defendant, the only daughter of Dr. Andrews.
10. According to the plaintiffs, they came to know about the disposal of the properties left by their father and grandmother only after the execution of the sale deeds in favour of the defendants 3 and 4 by the second defendant.
11. It is the definite case of the plaintiffs that since no partition was effected between the legal heirs of Dr.Andrews, after his death, the sale of the properties referred to in the schedule mentioned items 1, 2, 3 and 4 cannot be said to be valid sale under law.
12. Moreover, the plaintiffs would vehemently contend that after the demise of Dr. Andrews, the first defendant with the connivance of other defendants especially 3 and 4 have concocted and fabricated the alleged Power of Attorney deed. The plaintiffs have categorically denied that no such power was given by Aniranjitham in favour of the second defendant to sell the properties referred to in items 1, 2, 3 and 4 of the schedule mentioned properties.
13. It is seen that the defendants 1, 2, and 5 had not entered appearance but filed written statement in the suit and they remained ex parte. However, during the course of the trial before the Court below, on behalf of the defendants, second defendant was examined as D. W.2. As already stated above, claiming half share in the properties referred to in the plaint schedule, the plaintiffs 1 to 3 have instituted the suit in O.S.No.50 of 1982 before the Subordinate Judge, Tuticorin. In that suit a person, who had a lease right from Aniranjitham in respect of the 4th item of the property was cited as the 6th defendant .
14. It is the definite case of the defendants that a family arrangement was effected between the legal heirs of Dr. Andrews immediately after his demise. As per the family arrangement, the properties referred to in the plaint schedule and some other properties were allotted to Aniranjitham, wife of Dr. Andrews, for her exclusive possession and enjoyment. Likewise, the other properties, left by Dr. Andrews, were allotted to his son and daughter.

15. In this connection, the grand daughter of Dr.Andrews, second defendant in the suit was examined as D.W.2. and she has deposed that certain properties were allotted to her mother, the first defendant herein, and later on her mother sold out those properties to other persons. In this connection, she has categorically stated as follows:
"Mother was given a landed property in the family arrangement and she has disposed it of and she has purchased the land in Madras with the consideration she has received."
16. In this connection, the learned counsel appearing for the respondent/4th defendant would contend that soon after the death of Dr. Andrews, a family arrangement was effected between his wife, son and daughter, pursuant to the decision taken by them at the prayer meeting conducted on the eve of the death of Dr.Andrews. The learned counsel would point out that the properties referred to in the schedule particularly, items 1 to 4 were given to Aniranjitham, as her share, for her exclusive possession and enjoyment.
17. It is pointed out that apart from those properties some other properties were also given to her. During the life time of Aniranjitham, she was staying in the house referred to as item 4 of the property and thereafter, she settled at Madras. When she was not to able to maintain the said property, she executed a Power of Attorney in favour of her grand daughter, the second defendant herein, to maintain the properties. Thereafter, the grand daughter and Power holder of Aniranjitham, had executed a sale deed in favour of the fourth defendant.
18. It is contended by the learned counsel that items 2, 3 and 4 of the properties referred to in the plaint schedule, were exclusively enjoyed by Aniranjitham and thereafter, the same were sold to the 4th defendant for consideration. Further, the learned counsel would point out that the first defendant, mother of the second defendant and the son of Dr. Andrews relinquished their right by relinquish deed, Ex.B.3., which has been executed by the first defendant. Further, the learned counsel would point out that the said family arrangement said to have been effected by the parties referred to in Ex.A.4. Therefore, in such circumstances, the learned counsel would point out that on the basis of oral and documentary evidence, the learned Subordinate Judge, dismissed the suit. Further, the learned counsel would point out that the sale deed executed by D.W.2 is valid under law. In such circumstances, the learned Subordinate Judge, decreed the suit in O.S.No.93 of 1984 in favour of the fourth defendant declaring that he is entitled for delivery of possession and for declaration in respect of the 4th item of the property.
19. Refuting the contentions raised by the respondents/defendants as not sustainable under law and on facts, the learned counsel would point out that no such family arrangement was arrived at between the Aniranjitham and her son and daughter after the death of her husband.
20. With regard to the factum of family arrangement no evidence has been adduced by D.W.2. Even though a detailed written statement was filed by the third defendant, he has not come forward for adducing evidence before this Court but remained exparte.
21. It is alleged that the third defendant purchased the first item of the property for valuable consideration. It is pointed out that even though the power of attorney was executed in favour of the second defendant by Aniranjitham no such document has been produced. For proving the

factum of family arrangement said to have been effected between Aniranjitham and her son and daughter after the demise of Dr. Andrews, none of the witnesses were examined on the side of the fourth defendant, when especially, D.W.2, has not stated anything about the family arrangement.

22. With regard to the execution of Power of Attorney by Aniranjitham, D.W.2 has stated as follows:

"When the first plaintiff was examined as P.W.1 on Commission and at the time of cross-examination by the 3rd defendant I handed over the power deed to Bala Singh, son of the said John Thomas."

23. Even though D.W.2 has stated that the said power deed was handed over to Bala Singh, son of John Thomas at the time of examination of D.W.2, no such document has been produced. It is stated by D.W.2 that the sale deed executed in favour of the defendants 3 and 4 was known to the first plaintiff in spite of that, the first plaintiff did not resist the said alienation made by the mother. In this connection, the learned counsel would point out that even though this Court assumes that there was family arrangement effected between the parties during 1954 after the demise of Dr. Andrews, since D.W.2 could not have attaine d majority by that time, there is no possibility for her to participate in the alleged family arrangement said to have been effected during the year 1954 for the reason that she was a minor at that time. In such circumstances, D.W.2 is not a competent person to speak about the alleged family arrangement said to have been effected between the parties during the year 1954.

24. With regard to such family arrangement, D.W.2 has deposed as follows:

"I am aware of the properties given to my mother in pursuance of the family arrangement. But I cannot say the details and value of those properties. My mother was given one landed property in the family arrangement and she has disposed it of and she has purchased a land in Madras and with the consideration she has received. I do not know to whom the said property was disposed of and for what price. I know some of the properties given to my uncle George and some of the properties he had disposed of. I cannot say the value of the properties disposed of by my uncle George nor did I know to whom the properties were sold."

25. Further, in her cross examination she has stated as follows:

"To my knowledge nothing was written at the time of family arrangement"

26. Further, the learned counsel would point out that the relinquish deed executed by D.W.1 is only an after thought for the purpose of fulfilling the lacunae and therefore, Ex.B.3, executed in favour of the fourth defendant is concocted one.

27. With regard to the execution of Ex.B.3, and with regard to the family arrangement, D.W.1 has deposed as follows:

"gp//rh/M/3 tpLjiy gj;jpuj;jpy; tpLjiy vGjpf; bfhLj;jtUf;F me;
j brhj;J FLk;g Vw;ghl;oy; fpilj;j brhj;J vd;W vGjg;ggltpy;iy/ thjpfsplkpUe;J tpLjiy gj;jpuk; vGjp th';ftpy;iy/ 2k; gpujpthjp jw;nghJ brd;idapy; FoapUf;fpwhh;/ Mdp u";rpjk; 2k; gpujpthjpf;F gth; gj;jpuk; vGjp bfhLj;jJ nehpy; bjhpahJ/ me;j gj;jpuj;jpy; ahuhtJ rhl;rp ifbahg;gkpl;lhh;fsh vd;Wk; bjhpahJ/ Mdp u";rpjk; 2k; gpujpthjpf;F gth; gj;jpuk; xd;Wk; vGjpf; bfhLf;ftpy;iy vd;gJk; rhpay;y/

28. In such circumstances, no such family arrangement could have been effected between Aniranjitham and her and son and daughter immediately after the demise of Dr. Andrews. Had any family arrangement really taken place between the parties, the same would have been reduced in writing and therefore, in the absence any material evidence, this Court is of the strong view that there could not be any family arrangement said to have been effected between the parties, immediately after the demise of Dr. Andrews. Moreover, as already discussed above, to speak about this alleged family arrangement no person has come forward, except D.W.2 to depose about the alleged family arrangement. No document is also produced. This Court does not rely on the evidence of D.W.2, since this Court considers that she is not a competent person to speak about the said family arrangement. In the above circumstances, it is unsafe to come to the conclusion that family arrangement was effected between Aniranjitham and her son and daughter.

29. In such circumstances, no properties referred to in plaint schedule items 1 to 4 could not have been allotted to Aniranjitham and thereby, the subsequent sale effected in favour of the third and fourth defendants become ineffective and not valid under law.

30. This Court is of the strong view that no family arrangement has been effected between the parties, namely, Aniranjitham, her son and daughter and no shares were allotted to Aniranjitham. The Power deed said to have been executed by Aniranjitham in favour of the second defendant was not valid under law. For the purpose of wrongful possession of the suit properties, the defendants have cooked up a story of family arrangement and alleged power deed. Therefore, we are of the view that no properties referred to in the plaint schedule were allotted, as shares, to Aniranjitham.

31. As already discussed above, since George, son of Dr.Andrews, passed away during the year 1978 his share devolves upon his legal heirs. It is an admitted fact that one of the legal heir of Dr. Andrews, namely, Aniranjitham also died, during the year 1982. Her 1 /3rd share devolves on the legal heirs of Dr. Andrews. In this context, the plaintiffs are entitled to claim + share in the suit properties and the defendants 1 and 2 are equally entitled to claim other + share.

32. In A.S.No.1118 of 2001, the respondent filed a suit for declaration and recovery of possession of the fourth item of the suit property, namely, house.

33. The Court below on the basis of oral and documentary evidence, decreed the suit as prayed for. Aggrieved by the same, the defendant filed the above appeal.

34. In view of the conclusion arrived at by us in A.S.No.954 of 19 88 that no family arrangement was effected among Aniranjitham and her son and daughter soon after the demise of Dr.Andrews and thereby no property was allotted to Aniranjitham, as her share, the alleged execution of power deed in favour of the second defendant by Aniranjitham and consequent sale of the fourth item of the property, namely, house, which is the subject matter of this appeal, cannot be accepted, since the same is not valid under law.

35. In this view of the matter, the appeal in A.S.No.954 of 1988 is to be allowed, but the appeal in A.S.No.1118 of 2001 is to be dismissed.

36. Accordingly, the Appeal in A.S.No.954 of 1988 is allowed and the Appeal in A.S.No.1118 of 2001 is dismissed setting aside the common

judgment and decree of the Court below. However, there will be no order as to costs. Consequently, the C.M.P.No.13244 of 1988 is closed.

RNB

To
The Principal Subordinate Judge,
Tuticorin, through the Principal
District Judge, Tuticorin.